

Pension Benefit Guaranty Corporation

§ 4007.13

for the flat-rate premium and any variable-rate premium for the short plan year are as specified in paragraph (a)(1), (a)(2), (a)(3), or (c) of this section (whichever applies). For the plan year that follows a short plan year, each due date is the later of—

(i) The applicable due date specified in paragraph (a)(1), (a)(2), or (a)(3) of this section, or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *Due dates for new and newly covered plans.* Notwithstanding paragraph (a) of this section, the due date for the flat-rate premium and any variable-rate premium for the first plan year of coverage of any new plan or newly covered plan is the latest of—

(1) The last day of the sixteenth full calendar month that began on or after the first day of the premium payment year (the effective date, in the case of a new plan), or

(2) 90 days after the date of the plan's adoption.

(d) *Continuing obligation to file.* The obligation to make flat-rate and (as applicable) variable-rate premium filings and payments under this part continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs earlier.

[61 FR 34020, July 1, 1996, as amended at 63 FR 68685, Dec. 14, 1998; 71 FR 31081, June 1, 2006; 72 FR 71229, Dec. 17, 2007; 73 FR 15077, Mar. 21, 2008]

§ 4007.12 Liability for single-employer premiums.

(a) The designation under this part of the plan administrator as the person required to make flat-rate and variable-rate premium filings and payments under this part for a single-employer plan is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of ERISA. Pursuant to section 4007(e) of ERISA, both the plan administrator and the contributing sponsor of a single-employer plan are liable for flat-rate and variable-rate premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled

group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) For any plan year in which a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) notices of intent to terminate in a distress termination under section 4041(c) of ERISA or the PBGC initiates a termination proceeding under section 4042 of ERISA, and for each plan year thereafter, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this part for a single-employer plan shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

(Approved by the Office of Management and Budget under control number 1212-0009)

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007]

§ 4007.13 Premiums for certain terminated single-employer plans.

(a) *Applicability—(1) In general.* This section applies where there is a “DRA 2005 termination” of a plan. Subject to paragraph (a)(2) of this section, there is a DRA 2005 termination where a single-employer plan's termination date under section 4048 of ERISA is after 2005 and either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) or (iii) of ERISA.

(2) *Plans terminated during reorganization proceedings.* Except as provided in paragraph (a)(3) of this section, a DRA 2005 termination of a plan does not occur where as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),

(iii) The person has not been discharged from the proceeding, and

(iv) The proceeding was filed before October 18, 2005.

(3) *Special rule for certain airline-related plans.* Paragraph (a)(2) of this section does not apply to an “eligible plan” under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan.

(4) *Termination premium.* A premium as described in § 4006.7 of this chapter is payable to PBGC with respect to a DRA 2005 termination each year for three years after the termination (the “termination premium”).

(b) *Filing requirements; method of filing.* Notwithstanding § 4007.3, in the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan’s termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member is responsible for filing prescribed termination premium information and payments. Any such person may file on behalf of all such persons.

(c) *Late payment penalty charges.* Notwithstanding § 4007.8(a), if any required termination premium payment is not filed by the due date under paragraph (d) of this section, PBGC may assess a late payment penalty charge based on the facts and circumstances, subject to waiver under § 4007.8(b), (c), (d), or (e). The charge will not exceed the amount of termination premium not timely filed.

(d) *Due dates.* Notwithstanding § 4007.11, the due date for the termination premium is the 30th day of each of three applicable 12-month periods. The three applicable 12-month periods with respect to a DRA 2005 termination of a plan are—

(1) *First applicable 12-month period.* Except as provided in paragraph (e) or (f) of this section, the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the plan’s termination date under section 4048 of ERISA, and

(2) *Subsequent applicable 12-month periods.* Each of the first two periods of 12 calendar months that immediately follow the first applicable 12-month period.

(e) *Certain reorganization cases.* (1) This paragraph (e) applies with respect to a DRA 2005 termination of a plan if the conditions in both paragraph (e)(2) and paragraph (e)(3) of this section are satisfied.

(2) The condition of this paragraph (e)(2) is that either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor’s controlled group meets the requirements of section 4041(c)(2)(B)(ii) of ERISA.

(3) The condition of this paragraph (e)(3) is that as of the plan’s termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan’s termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), and

(iii) The person has not been discharged from the proceeding.

(4) If this paragraph (e) applies with respect to a DRA 2005 termination of a plan, then except as provided in paragraph (f) of this section, the first applicable 12-month period with respect to the plan is the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the earliest date when, for every person that was a contributing sponsor of the plan on the

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day before the plan's termination date under section 4048 of ERISA, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, either—

(i) There is not pending any bankruptcy proceeding that was filed by or against such person and that was, as of the plan's termination date under section 4048 of ERISA, a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), or

(ii) The person has been discharged in any such proceeding, or

(iii) The person no longer exists.

(f) *Plan termination date in past when set.* If a plan's termination date under section 4048 of ERISA is in the past when it is established by agreement or court action as described in section 4048 of ERISA, then the first applicable 12-month period for determining the due dates of the termination premium begins with the later of—

(1) The first calendar month following the calendar month in which the termination date is established by agreement or court action as described in section 4048 of ERISA, or

(2) The first calendar month specified in paragraph (d)(1) of this section or (if paragraph (e) of this section applies) paragraph (e)(4) of this section.

(g) *Liability for termination premiums.* In the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, is jointly and severally liable for termination premiums with respect to the plan.

[72 FR 71230, Dec. 17, 2007]

APPENDIX TO PART 4007—POLICY GUIDELINES ON PREMIUM PENALTIES

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GENERAL PROVISIONS

1 What is the purpose of this Appendix?

This appendix sets forth principles and guidelines that we intend to follow in assessing, reviewing, and waiving premium penalties. However, this is only general policy guidance. Our action in each case is guided by the facts and circumstances of the case.

2 What defined terms are used in this Appendix?

The following terms are defined in part 4001 of this chapter: contributing sponsor, ERISA, PBGC, person, plan, and plan administrator. In addition, in this appendix:

(a) *Premium penalty* means a penalty under ERISA section 4007 and under this part for failing to pay a premium in full and on time.

(b) *Waiver* means reduction or elimination of a premium penalty that is being or has been assessed.

(c) *We* means PBGC.

(d) *You* means, according to the context,—

(1) A plan administrator, contributing sponsor, or other person, if—

(i) The person's action or inaction may be the basis for a premium penalty assessment,

(ii) The person may be required to pay the premium penalty, or

(iii) The person is requesting review of the premium penalty; or

(2) An employee or agent of, or advisor to, any of these persons.

3 What is the purpose of a premium penalty?

The basic purpose of a premium penalty is to encourage you to pay premiums in full and on time and to voluntarily self-correct any failure to do so.

4 What information is in this Appendix and how is it organized?

This Appendix has four divisions:

(a) *General provisions.* The General Provisions division (§§1–4) tells you the purpose